



# Department of Justice

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## **AMERICA ONLINE CHARGED WITH AIDING AND ABETTING SECURITIES FRAUD; PROSECUTION DEFERRED FOR TWO YEARS**

### ***Company Agrees to Cooperate With Investigation, Pay \$210 Million; Four Individuals Agree to Plead Guilty***

WASHINGTON, D.C. – Deputy Attorney General James B. Comey, Assistant Attorney General Christopher A. Wray of the Criminal Division, U.S. Attorney Paul J. McNulty of the Eastern District of Virginia and Assistant Director Chris Swecker of the FBI announced today that America Online, Inc., (AOL) has entered into an agreement with the government to defer prosecution on charges of aiding and abetting securities fraud in connection with transactions between AOL and PurchasePro.com.

A criminal complaint filed today in the Eastern District of Virginia charges Dulles, Virginia-based AOL with aiding and abetting securities fraud, in violation of 18 U.S.C. Section 2, 15 U.S.C. Sections 78j(b) and 78FF, and Title 17, Code of Federal Regulations, Section 240.10b-5. AOL has agreed to accept responsibility for the conduct of its employees in the PurchasePro transactions, adopt internal compliance measures and cooperate with an ongoing criminal investigation. An independent consultant will be chosen to monitor the company's compliance with the agreement. AOL has also agreed to pay into a compensation and settlement fund \$150 million and a criminal penalty of \$60 million.

Based on AOL's acceptance of those conditions and others, the Department of Justice has agreed to defer prosecution on the complaint for 24 months. A separate agreement also requires AOL's parent company, Time Warner, Inc., to cooperate with the ongoing criminal investigation.

In addition, four former PurchasePro executives have agreed to plead guilty to criminal charges arising from the investigation into the AOL/PurchasePro transactions.

"Today's deferred prosecution agreement gives AOL a chance to make amends for its conduct and clean up its act, in return for a stiff penalty and far-reaching reforms," said Deputy Attorney General Comey, the chairman of the President's Corporate Fraud Task Force. "In this major corporate investigation, the government has achieved a result that minimizes the collateral damage to shareholders and employees while imposing appropriate punishment and protecting the rights of victims."

"The agreements with AOL and Time Warner are designed to restore corporate accountability and financial integrity," said Assistant Attorney General Wray, a member of the Corporate Fraud Task Force. "The Department of Justice will not hesitate to prosecute companies and individuals who use secret side deals to puff up their balance sheets with income that was not earned. At the same time, we will take into account steps taken by corporations,

particularly if they involve significant remedial actions to ensure that such conduct does not occur in the future.”

“The investing public has a right to expect, and demand, honesty in the reporting of securities information,” said U.S. Attorney McNulty. “We are continuing a vigorous and thorough investigation, which we anticipate will result in additional criminal charges.”

“Three years subsequent to the beginning of what has become a corporate fraud crisis in the United States, the FBI remains totally committed, along with our investigative partners, to leading the fight against corporate fraud,” said FBI Assistant Director Swecker. “To date, FBI investigations have resulted in 448 individuals being charged with corporate fraud-related matters. There have been 279 convictions, hundreds of millions of dollars in forfeitures, and numerous cases are pending trials. Although victim investors will never be made whole by former corporate fraud activity within AOL, this latest agreement is another example of the FBI’s dedication to minimizing their losses as much as possible.”

### **America Online, Inc.**

PurchasePro, based in Las Vegas, Nevada, engaged in the sale of Internet procurement software and services. The criminal complaint and an accompanying statement of facts allege that in March 2000, PurchasePro and AOL entered into a strategic partnership in which PurchasePro paid AOL \$70 million and gave one million warrants for placement on AOL’s Netbusiness website, Internet advertising and other services. In exchange for this cash and warrants to AOL, PurchasePro expected AOL would help PurchasePro sell its products by referring customers and generating revenue through transactions on AOL’s Netbusiness platform. But by September 2000, AOL had not helped PurchasePro generate any revenue. When the strategic partnership did not generate the expected revenues, AOL began to help PurchasePro meet its quarterly revenue objectives by directly buying products from PurchasePro that AOL did not want or need. AOL then helped mislead PurchasePro’s auditors about how the revenue was in fact earned.

The court documents allege that AOL aided and abetted PurchasePro’s officers in reporting at least \$10 million in false revenue in the fourth quarter of 2000 and announcing at least \$20 million in false revenue in the first quarter of 2001. As a result of allegedly aiding the PurchasePro fraud, AOL was able to report approximately \$20 million in additional revenue in the fourth quarter of 2000 and about \$15 million of additional revenue in the first quarter of 2001.

In exchange for an agreement by the Department of Justice to defer prosecution, AOL is required to:

- Accept and acknowledge responsibility for the conduct of AOL personnel in the PurchasePro transactions;
- Cooperate fully with the Department of Justice;
- Pay \$150 million to a compensation fund and \$60 million in penalties;
- Adopt internal controls designed to deter potential violations of company policies and procedures; and

- Cooperate with an independent monitor, mutually agreed upon by the Department of Justice and AOL, who will report to the Department on at least a semi-annual basis.

### **Time Warner, Inc.**

New York-based Time Warner, Inc., which merged with AOL in January 2001, entered into an agreement with the Department of Justice requiring the company's cooperation with an ongoing investigation in exchange for an agreement by the Department to not prosecute the company. Time Warner has accepted responsibility for the actions of its employees in the AOL/PurchasePro transactions. The agreement requires Time Warner's cooperation with the independent monitor's examination of AOL's internal controls.

### **Four Individuals Agree to Plead Guilty, Cooperate With Investigation**

Four former PurchasePro executives have agreed to plead guilty to criminal charges in the Eastern District of Virginia and cooperate with the government's investigation. Those four individuals are:

- Robert Geoffrey Layne, 39, of Lexington, Kentucky. Layne, a co-founder of PurchasePro who held the position of Executive Vice President, has agreed to plead guilty to a single-count criminal information charging him with securities fraud;
- Shawn P. McGhee, 41, of Memphis, Tennessee. McGhee, the Chief Operating Officer at PurchasePro from December 2000 until June 2001, has agreed to plead guilty to a single-count criminal information charging him with conspiracy to commit securities fraud;
- Dale L. Boeth, 42, of Roanoke, Texas. Boeth, a former Senior Vice President of Strategic Development and Senior Vice President of Consulting Services at PurchasePro, has agreed to plead guilty to a single-count criminal information charging him with conspiracy to commit securities fraud; and
- James S. Sholeff, 37, of Las Vegas, Nevada. Sholeff, a former sales representative, sales manager, project manager and vice president at PurchasePro, has agreed to plead guilty to a one-count criminal information charging him with perjury.

The America Online investigation was conducted by the U.S. Attorney's Office for the Eastern District of Virginia, the Fraud Section of the Criminal Division at the U.S. Department of Justice and the Federal Bureau of Investigation. The investigation was conducted under the auspices of the President Bush's Corporate Fraud Task Force, created in July 2002 to investigate allegations of fraud and corruption at U.S. corporations. To date, the Task Force has charged more than 900 individuals in over 400 cases. More than 500 individuals have been convicted to date.

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